

## **Senate Bill No. 960**

### **CHAPTER 856**

An act to amend, repeal, and add Section 311 of, to add and repeal Sections 1701.1, 1701.2, 1701.3, and 1701.4 of, and to repeal and add Section 309.5 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 23, 1996. Filed  
with Secretary of State September 24, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 960, Leonard. Public Utilities Commission: administrative procedures.

Under existing law, the Public Utilities Commission is responsible for the regulation of public utilities within the state.

This bill would state the intent of the Legislature regarding the commission's decisionmaking process.

Existing law requires the commission to create a consumer advocacy division.

This bill would establish an advocacy division with a director appointed by and serving at the pleasure of the Governor, subject to Senate confirmation and would require the division's annual budget to be separately identified.

Existing law requires the Public Utilities Commission, upon scheduling hearings and specifying the scope of issues to be heard in any proceeding involving specified public utilities, to assign an administrative law judge to preside over the hearings, either sitting alone or assisting the commissioners who will hear the case.

This bill would authorize the commission to determine whether a proceeding requires a hearing, would authorize the commission to assign one or more commissioners and administrative law judges to oversee cases, and would prescribe separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. The bill would require the commission to submit a report to the Legislature on or before March 31, 1997, regarding the categorization of cases.

The bill would require the commission on or before June 30, 1997, to submit a report to the Legislature on needed revisions of law. The bill would require the commission, on and after January 1, 1999, to annually submit a report to the Legislature regarding case management matters.

The bill would require the commission on or before March 31, 1997, to submit a report to the Legislature concerning regulations and statutes affected by specified matters.

The bill would provide that specified provisions become operative on January 1, 1998, and would be repealed on January 1, 2002, unless later enacted statutes extend or delete that date.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature to ensure that members of the Public Utilities Commission shall be integrally and directly involved in, and accountable for, the commission's decisions. The Legislature intends to enhance commissioner involvement in decisionmaking, thereby improving the quality and timeliness of commission decisions.

It is further the intent of the Legislature that the Public Utilities Commission establish reasonable time periods for the resolution of proceedings, that it meet those deadlines, that those deadlines not exceed 18 months and be consistent with the rate case plans, whichever is shorter.

SEC. 2. Section 309.5 of the Public Utilities Code is repealed.

SEC. 3. Section 309.5 is added to the Public Utilities Code, to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers in commission proceedings. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided by the assigned

commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. All moneys deposited in the account shall be utilized exclusively by the division in the performance of its duties. The annual budget for the division shall be separately identified in the commission's annual budget request. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 4. Section 309.5 is added to the Public Utilities Code, to read:

309.5. The commission shall create an organization or division within the commission to represent the interests of public utility customers and subscribers in commission proceedings. The commission shall, by rule or order, provide for the assignment of personnel to and the functioning of the organization or division.

This section shall become operative on January 1, 2002.

SEC. 5. Section 311 of the Public Utilities Code is amended to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, and 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30

days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 6. Section 311 is added to the Public Utilities Code, to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts. The commission, upon scheduling hearings and specifying the scope of issues to be heard in any proceeding involving an electrical, gas, telephone, railroad, or water corporation,

or a highway carrier, shall assign an administrative law judge to preside over the hearings, either sitting alone or assisting the commissioner or commissioners who will hear the case.

(c) The evidence in any hearing shall be taken by the administrative law judge designated for that purpose. The administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) The administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Beginning January 1, 1995, any item appearing on the commission's public agenda as an alternate item to an administrative law judge's proposed decision shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules by October 1, 1995, that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) This section shall become operative on January 1, 2002.



SEC. 7. Section 1701.1 is added to the Public Utilities Code, to read:

1701.1. (a) The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision. If that decision is not appealed to the commission within that time period it shall not be subsequently subject to judicial review. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish regulations regarding ex parte communication on case categorization issues.

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) "Ex parte communication," for purposes of this article, means any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. "Person with an interest," for purposes of this article, means any of the following:

(A) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(B) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent

or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

(C) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

The commission shall by regulation adopt and publish a definition of decisionmakers and persons for purposes of this section, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The regulation shall provide that reportable communications shall be reported by the party, whether the communication was initiated by the party or the decisionmaker. Communications shall be reported within three working days of the communication by filing the original and 12 copies of a “Notice of Ex Parte Communication” with the commission. The notice shall include the following information:

(i) The date, time, and location of the communication, and whether it was oral, written, or a combination.

(ii) The identity of the recipient and the person initiating the communication, as well as the identity of any persons present during the communication.

(iii) A description of the party’s, but not the decisionmaker’s communication and its content, to which shall be attached a copy of any written material or text used during the communication.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 8. Section 1701.2 is added to the Public Utilities Code, to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The regulation shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public

utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Ex parte communications shall be prohibited in adjudication cases.

(c) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(d) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

(e) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 9. Section 1701.3 is added to the Public Utilities Code, to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision. An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments



of the case. The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting. The alternate decision shall be filed with the commission and shall be served on all parties simultaneously with the proposed decision.

The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(b) The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.

(c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period which shall not in any circumstance exceed 14 days. If the commission holds the decision it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendered for final decision. The commission may meet in closed session for the second half of that interval.

(d) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(e) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be



extended for 30 days if any alternate decision is proposed pursuant to Section 311.

(f) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 10. Section 1701.4 is added to the Public Utilities Code, to read:

1701.4. (a) If the commission pursuant to Section 1701.1 has determined that a quasi-legislative case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned administrative law judge shall act as an assistant to the assigned commissioner in quasi-legislative cases. The assigned commissioner shall be present for formal hearings. The assigned commissioner shall prepare the proposed rule or order with the assistance of the administrative law judge. The assigned commissioner shall present the proposed rule or order to the full commission in a public meeting. The report shall include the number of days of hearing and the number of days that the commissioner was present.

(b) Ex parte communications shall be permitted without any restrictions.

(c) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

(e) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 11. On or before March 31, 1997, the Public Utilities Commission shall submit a report to the Legislature containing its recommendations on the categorization of cases, procedures for dealing with cases that may fit into multiple categories, and procedures for dealing with those cases that may change nature after hearings commence.

SEC. 12. On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

SEC. 13. On and after January 1, 1999, the Public Utilities Commission shall annually submit a report to the Legislature on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings.

SEC. 14. In order to enhance fair competition, on or before March 31, 1997, the commission shall submit a report to the Legislature concerning its recommendations for changes to regulations or statutes that may be required as a consequence of the changing competitive environment in which regulated and unregulated entities are competitors.

SEC. 15. Sections 2 to 10, inclusive, of this act shall become operative on January 1, 1998.

